

C.V.S.P. ASU 149L

P.O. Box 2349

BLYTHE, CA 92226

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

FILED

JUN - 9 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

JEFF JAY HANCOCK

CASE NO. C07-04469 CW

PETITIONER

SUPPLEMENTAL TRAVERSE

JAMES D. HARTLEY, Acting Warden

RESPONDENT

Petitioner believes that had CALJIC 2.28 been given by the court the jury could have better considered the significance of the People's concealment of Exhibit 26 (interrogation tape), given by the People to the Defense at a recording speed of 78. The jury could have compared Petitioner's trial testimony (RT Vol III pg. 349 lns. 13-27 and better considered why Petitioner made the statements on the interrogation tape Exhibit 26. Petitioner further believes the court anticipated a potential disclosure problem based on Petitioner previous Marsden Hearing testimony in front of the same judge (see Marsden Hearing 10/21/03 ps. 4-6) CALJIC 2.28 was requested by Petitioner's defense attorney and subsequently denied by the court (see Jury Instructions 204), Petitioner believes his 6th and 14th Amendment rights as guaranteed by the United States Constitution were violated and requests a writ of habeas corpus be ordered by the court.

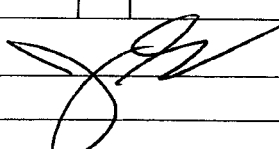
6/3/08

Jeff Jay Hancock

## Jury Instructions 204

## CALJIC 2.28

FAILURE TO TIMELY PRODUCE EVIDENCE  
(PEN. CODE, § 1054.5, subd. (b))

Requested by People		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused	<input checked="" type="checkbox"/>				
Withdrawn					
					Judge

Print Date: 4/2003

## 2.28

The prosecution and the defense are required to disclose to each other before trial the evidence each intends to present at trial so as to promote the ascertainment of the truth, save court time and avoid any surprise which may arise during the course of the trial. [Concealment of evidence] [and] [or] [[D][d]elay in the disclosure of evidence] may deny a party a sufficient opportunity to subpoena necessary witnesses or produce evidence which may exist to rebut the non-complying party's evidence. Disclosures of evidence are required to be made at least 30 days in advance of trial. Any new evidence discovered within 30 days of trial must be disclosed immediately. In this case, the [People] [Defendant[s]] \_\_\_\_\_ [concealed] [and] [or] [failed to timely disclose] the following evidence: \_\_\_\_\_

Although the [People's] [Defendant's] \_\_\_\_\_ [concealment] [and] [or] [failure to timely disclose evidence] was without lawful justification, the Court has, under the law, permitted the production of this evidence during the trial.

The weight and significance of any [concealment] [and] [or] [delayed disclosure] are matters for your consideration. However, you should consider whether the [concealed] [and] [or] [untimely disclosed evidence] pertains to a fact of importance, something trivial or subject matters already established by other credible evidence.

[A defendant's failure to timely disclose the evidence [he] [she] intends to produce at trial may not be considered against any other defendant[s] [unless you find that the other defendant[s] authorized the failure to timely disclose].]

204

Defense attorney Hardin subsequently  
passed away due to this illness.  
I didn't speak with trial counsel Eben Kurtzman  
until the 1st week in May 2004.

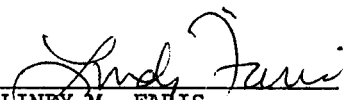
DECLARATION OF LINDY M. FARIS  
IN SUPPORT OF MOTION FOR CONTINUANCE

I, Lindy M. Faris, do hereby declare:

1. That I the attorney specially appearing for Dave Hardin, the attorney of record for defendant;
2. That Mr. Hardin has been sick since January 6, 2004.  
His condition has worsened from what was diagnosed as pneumonia to a serious condition which has put him on the list for a heart transplant at Stanford Hospital;
3. That Mr. Hardin has been advised by his doctor that he will be hospitalized indefinitely;
4. That this motion is unopposed by the prosecutor assigned to this case;
5. That a continuance of the trial for at three months is necessary in order for Mr. Hardin to be able to prepare for and attend trial;

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: February 13, 2004

  
LINDY M. FARIS  
Attorney at Law

---000---

DEFENDANT-APPELLANT.

SANTA CLARA CO. NO. EE302496

FOR THE DEFENDANT/APPELLANT: 6TH DISTRICT APPELLATE PROGRAM  
100 N. WINCHESTER BLVD.  
SUITE 310  
SANTA CLARA, CA 95050.

Harsden Hearing 10/21/03

1       INAUDIBLE.

2               THE COURT:   YOU HAVE TO UNDERSTAND, I DON'T KNOW  
3       THE EVIDENCE IN YOUR CASE.   I DON'T KNOW THIS CASE.   MAYBE  
4       JUDGE WETENKAMP KNOWS IT BETTER BECAUSE YOU WERE MAINLY  
5       SEEING JUDGE WETENKAMP THESE LAST COUPLE OF MONTHS, BUT I  
6       DON'T EVEN KNOW ANYTHING ABOUT A TAPE.

7               SO WHEN YOU'RE SAYING THAT THE TAPE WAS -- IS HARD TO  
8       DECIPHER, I DON'T EVEN KNOW WHAT TAPE YOU'RE TALKING ABOUT.  
9       MAYBE MR. CAMPERI OR YOU CAN SHED SOME LIGHT ON THIS, BUT  
10      UNDERSTAND I DON'T KNOW THIS CASE.   I WILL ONLY START  
11      UNDERSTANDING THIS CASE WHEN I START HEARING THE EVIDENCE.  
12      SO WHAT TAPE ARE WE TALKING ABOUT?

13              THE DEFENDANT:   THE TAPE IS SUPPOSED TO BE A TAPE  
14      RECORDING OF A CONFESSION OF ME CONFESSING TO AN OFFICER  
15      ANDERSON FIVE DAYS AFTER I WAS ARRESTED, WHICH I WAS IN  
16      DOWNTOWN IN THE OLD JAIL IN SECOND EAST, AND HE CAME IN AND  
17      TOLD ME HE WAS AN INTERVIEWER, A PERSON WHO DID INTERVIEWS  
18      FOR THE SUNNYVALE POLICE DEPARTMENT.

19              ON THE APPLICATION REPORT IT SAYS RIGHT WHEN I WALKED  
20      IN HE ANNOUNCED HE WAS A SUNNYVALE POLICE DEPARTMENT, WHICH  
21      WAS UNTRUE, BUT HE'LL PROBABLY DENY THAT.   BUT HE DIDN'T  
22      HAVE A RECORDING DEVICE THERE.   HE WAS TALKING TO ME FOR --  
23      ABOUT 80 PERCENT OF THIS WHOLE INTERVIEW WAS DONE WITHOUT A  
24      RECORDING DEVICE SITTING THERE.   AND THEN HE SAID, OKAY, I'M  
25      GOING TO HAVE TO MIRANDIZE YOU NOW.   AND HE PULLS THE  
26      RECORDING DEVICE OUT OF HIS POCKET, SETS IT ON THE TABLE AND  
27      TURNS IT ON.

28              UNBEKNOWNST TO ME PRIOR TO ME COMING INTO THE ROOM, AS

1/5/  
19-28

1ms 1-17

1 HE SAYS IN HIS REPORT, HE TURNED ON A CONCEALED RECORDING  
2 DEVICE THAT HE HAD UNDER HIS JACKET. SO WHAT WE TALKED  
3 ABOUT PRIOR TO HIM MIRANDIZING ME APPARENTLY WAS RECORDED ON  
4 THAT CONCEALED RECORDER. I DIDN'T KNOW AT THE TIME HE HAD A  
5 CONCEALED RECORDER. SO THEREIN LIES MY CONFESSION,  
6 SUPPOSEDLY, ON THAT TAPE.

7 ON MY PROPERTY OR EVIDENCE SHEETS HERE ON MY REPORT,  
8 ONE OF THEM IS A MINI-AUDIO CASSETTE RECORDER, AND THE OTHER  
9 ONE IS A SIGNED MIRANDA ADMONISHMENT WHICH, AFTER HE PUT THE  
10 RECORDER OUT AND READ ME MY RIGHTS, I DID SAY I UNDERSTAND  
11 THEM, AND I DID SAY I WAIVED THEM. BUT 90 PERCENT OF WHAT  
12 WE TALKED ABOUT WAS PRIOR TO HIM READING ME THOSE MIRANDA  
13 RIGHTS AND PRIOR TO ME EVER SEEING A REPORT.

14 I TRIED TO CONVEY THAT TO MR. CAMPERI, BUT IT'S LIKE  
15 IT DOESN'T MATTER, THEY GOT THE RECORDER, THEY CAN LIE TO  
16 YOU, IT DOESN'T MATTER.

17 THE COURT: LET ME HOME IN ON WHAT THE ISSUE IS  
18 HERE FOR ME RIGHT NOW. YOU HAVE TO BASICALLY CONVINCE ME  
19 THAT MR. CAMPERI IS NOT ACTING COMPETENTLY AS YOUR ATTORNEY.  
20 THAT REALLY IS THE BOTTOM LINE ISSUE.

21 THERE'S OTHER ISSUES PERTINENT TO YOUR CASE IN  
22 GENERAL, OF COURSE, BUT FOR THIS HEARING RIGHT NOW THIS ONE  
23 THAT'S UNDER SEAL, IT'S WHAT HAS MR. CAMPERI DONE OR NOT  
24 DONE THAT HAS SHOWN INCOMPETENCE OF COUNSEL.

25 THE DEFENDANT: THE ONLY OTHER THING, THE MAIN  
26 THING I CAN THINK OF IS THAT, YOU KNOW, I'VE BEEN IN CUSTODY  
27 FOR 70 DAYS AND I HAVEN'T HAD AN ATTORNEY COME AND ACTUALLY  
28 SIT DOWN AND DISCUSS THIS CASE WITH ME.

Mar sden Hearing 10/21/03

6

1 HE'S COME OUT AND DISCUSSED A TAPE WHICH HE GOT FROM  
2 OFFICER ANDERSON, I ASSUME, OR THE D.A., WHICH WAS A  
3 DUPLICATE OF THE TAPE WHICH WAS RECORDED AT MICKEY MOUSE  
4 SPEED, LIKE 78 SPEED. YOU COULDN'T EVEN TELL IT WAS MY  
5 VOICE OR THE OFFICER'S VOICE ON IT, BUT APPARENTLY HE SAYS  
6 THAT THE SLOWED DOWN ONE YOU CAN. BUT I NEVER HEARD THE  
7 SLOWED DOWN ONE. I HEARD THIS ONE.

8 THAT'S BASICALLY ALL WE HAVE DISCUSSED, IS THAT. WE  
9 HAVEN'T SAT DOWN AND DISCUSSED THE POLICE REPORT. A FEW  
10 LINES OF IT IN THE JURY BOX HE'S GONE OVER WITH ME, BUT WE  
11 HAVEN'T REALLY ACTUALLY, ACTUALLY DISCUSSED THE CASE YET.

12 I'VE BEEN IN JAIL FOR A COUPLE OF MONTHS, AND I FEEL  
13 LIKE, GOD, I'M BEING TOLD TO TAKE FOUR YEARS, IT'S A GIFT  
14 AND I BETTER JUMP ON IT. I DON'T UNDERSTAND REALLY WHY.

15 THE COURT: WHAT DO YOU HAVE TO SAY, MR. CAMPERI,  
16 AS TO THIS?

17 MR. CAMPERI: OKAY, YOUR HONOR. I -- YOU KNOW, I  
18 UNDERSTAND MR. HANCOCK'S CONCERN ABOUT DOING FOUR YEARS,  
19 WHICH IS A SUBSTANTIAL CHUNK OF TIME FOR A CASE THAT HE  
20 FEELS IS NOT WORTHY OF THAT AMOUNT OF TIME. AND I  
21 UNDERSTAND ALL THAT. AND I TAKE THAT INTO CONSIDERATION  
22 WHEN I COME OUT AND TALK TO MY CLIENTS AT THE JAIL.

23 I NOT ONLY TALKED TO MR. HANCOCK BECAUSE I WAS VERY  
24 CONCERNED ABOUT HIS EXPOSURE ON THIS CASE AT THE JAIL BUT --  
25 I BELIEVE THAT I TALKED TO HIM FOR AN HOUR AT THE JAIL. I  
26 LOOKED AT MY WATCH WHEN I WENT IN, AND I LOOKED AT IT AS I  
27 SIGNED OUT. IT WAS AN HOUR.

28 I SPOKE TO HIM -- AS THE COURT KNOWS, WE HAVE



Case # EE 302496

1 A RIGHT.

2 Q BUT YOUR LOYALTY TO CRAIG DAVIS OVERRIDES PROTECTING  
3 YOURSELF AS YOU FACE THIS CHARGE; IS THAT WHAT YOU'RE  
4 TELLING US?

5 A I'M SAYING THAT I THOUGHT AT THE TIME OF THE  
6 INTERVIEW, I THOUGHT THAT MY CHARGE WAS GOING TO BE REDUCED,  
7 THAT IT WAS GOING TO BE LESS THAN ASSAULT WITH A DEADLY  
8 WEAPON.

9 AND I THOUGHT WHY SHOULD I INVOLVE MR. DAVIS, AND I'M  
10 -- IF MY DISCHARGE IS GOING TO BE REDUCED AND I'LL DO 30 OR  
11 60 DAYS, AND WHY SHOULD I GET HIM IN TROUBLE AND MAKE HIM GO  
12 DO 30 AND 60 DAYS WITH ME?

13 I THOUGHT THAT WAS WHAT OFFICER ANDERSON WAS THERE  
14 FOR, TO WRAP THINGS UP, THAT I WAS GOING TO BE CHARGED WITH  
15 A BATTERY. IN MY EYES THAT WAS OKAY, I'M JUST GOING TO GO  
16 DO 30 DAYS OR 60 DAYS OR SIX MONTHS COUNTY JAIL TIME AT THE  
17 FARM. THAT'S WHAT I THOUGHT.

18 Q WHY DID YOU THINK THAT?

19 A WELL, HE MENTIONED THE WORD "BATTERY" TO ME. BUT I  
20 MEAN -- AND I THOUGHT HE MENTIONED "WRAP THINGS UP" TO ME,  
21 BUT AS I READ THAT, I DIDN'T SEE -- I DON'T THINK I SAW THE  
22 EXACT WORDS "WRAP THINGS UP." I THOUGHT AS I -- THINKING  
23 BACK ON IT, I THOUGHT HE DID SAY THAT TO ME.

24 Q HOW MANY TIMES HAVE YOU LISTENED TO THE TAPE?

25 A I'VE LISTENED TO -- I'VE LISTENED TO THE TAPE AT THAT  
26 SPEED -- THAT'S THE SECOND -- YESTERDAY WAS THE SECOND TIME  
27 I'VE HEARD IT, OKAY, IN NINE AND A HALF MONTHS.

28 Q HOW MANY TIMES HAVE YOU LISTENED TO IT AT DIFFERENT

Prior at  
78  
Speed



1 DOES INCLUDE THE ENTIRE CONTENTS OF THE TAPE AS PROVIDED BY  
2 THE POLICE DEPARTMENT TO THE D.A., AND THAT TAPE WAS THE ONE  
3 THAT WAS GIVEN PURSUANT TO NORMAL DISCOVERY TO MR. KURTZMAN.

4 BUT THE RECORD SHOULD REFLECT THAT THE TAPE THAT THE  
5 JURY HAS HEARD HAS BEEN EDITED TO IN ESSENCE DELETE MUCH OF  
6 THE -- ALL OF THE LAST PART OF THE INTERVIEW, WHICH IS ABOUT  
7 FIVE PAGES LONG. "THE TRANSCRIPT THAT WAS GIVEN TO THE JURY  
8 SHOWS WORD FOR WORD THE EDITED TAPE HERE." AND I WAS GIVEN  
9 BY MR. DEMERTZIS, AND I'M SURE IT WAS JUST AN OVERSIGHT, I  
10 WAS GIVEN A TRANSCRIPT OF THE COMPLETE ORIGINAL TAPE.

11 IN ORDER FOR PEOPLE'S 27 TO CONFORM WITH WHAT THE JURY  
12 HAS BEEN GIVEN AND WHAT THE TAPE TELLS THIS JURY WAS EDITED,  
13 WHAT THE ATTORNEYS HAVE AGREED TO DO IS TO SUBSTITUTE AS  
14 PEOPLE'S 27 THE TAPE THAT EVERYONE ELSE HAS -- THE  
15 TRANSCRIPT THAT EVERYONE ELSE HAS, INCLUDING THE JURY. THAT  
16 TRANSCRIPT IS IN FACT 43 PAGES LONG AND IS A TRUE AND  
17 ACCURATE -- AS BEST AS WE CAN DETERMINE, A TRUE AND ACCURATE  
18 RENDITION WHAT THE EDITED TAPE TRANSCRIPTS ARE. IS THAT  
19 CORRECT? HAVE I SAID ANYTHING WRONG?

20 MR. DEMERTZIS: NO, YOUR HONOR, OTHER THAN THE  
21 COMPLETE TRANSCRIPT I GAVE YOU, IT WASN'T AN OVERSIGHT. I  
22 THOUGHT THAT'S WHAT THE COURT CALLED FOR.

23 THE COURT: NO. IT WAS JUST A MISCOMMUNICATION  
24 THEN. ALL I WANTED WAS A TRANSCRIPT OF THE EDITED VERSION  
25 OF THE TAPE.

26 MR. DEMERTZIS: THAT'S WHAT I'VE NOW GIVEN YOU,  
27 "THE SAME TRANSCRIPT THE JURY HAS, AND IT'S A TRANSCRIPT OF  
28 THAT PORTION OF THE TAPE THAT THE JURY LISTENED TO.

"Judge"  
Ins. 8-10

"D.A."  
Ins. 20-21

"Judge"  
Ins. 24, 25

D.A.  
Ins. 26, 27

1 STATE OF CALIFORNIA )

2 COUNTY OF RIVERSIDE )

PROOF OF SERVICE BY  
PERSON IN STATE CUSTODY3 I, Jeff Hancock, the undersigned, certify, and do4 declare that I am over the age of 18 years, incarcerated at Chuckawalla Valley5 State Prison, located at Blvthe, CA and a party / not a party to the6 attached foregoing cause of action. On June 4th, 2008, I did serve

7 a true copy of:

8 Supplemental Traverse  
9 with attachments  
10  
11  
1213 [ ] by depositing it in a prison mail box in a sealed envelope, or ☒ by  
14 handing it to institutional staff in a sealed envelope, along ☒ with Inmate  
15 Trust Account Withdrawal Order Form attached to it requesting that postage be  
16 fully prepaid, or [ ] with postage affixed thereto for deposit in the United  
17 States Mail pursuant to California Code of Regulations Sections 3142 and 3165;  
18 addressed to the following:19 Office of the Clerk, U.S. District Court  
20 Northern District of California  
21 1301 Clay Street, Suite 4005  
22 Oakland, CA. ~~94612-5212~~ 94612-5212  
23Intended place of mailing: U.S. Post Office, at Blvthe, California.

24 I further declare under penalty of perjury that the foregoing is true and

25 correct to the best of my knowledge, and belief. Executed on June 4th26 200827 Jeff Hancock  
28 PETITIONER/DECLARANT IN PRO PER